

ESTTA Tracking number: **ESTTA22227**

Filing date: **12/28/2004**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

<b>Proceeding</b>	92043017
<b>Party</b>	Defendant Cuzcatlan Beverages, Inc. Cuzcatlan Beverages, Inc. 13015 S.W 89 Place., No. 225 Miami, FL 33176
<b>Correspondence Address</b>	Cuzcatlan Beverages, Inc. 13015 S.W 89 Place., No. 225 Miami, FL 33176
<b>Submission</b>	Motion to Dismiss 2.132
<b>Filer's Name</b>	Cheryl Meide, Esquire
<b>Filer's e-mail</b>	cmeide@meidelaw.com
<b>Signature</b>	/Cheryl Meide/
<b>Date</b>	12/28/2004
<b>Attachments</b>	CBI.010 Registrant's Motion to Dismiss for Failure to Prosecute.pdf ( 3 pages )

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

George Contos and Neil Pryor,  
Petitioners

v.

C.B.I. International, Inc.  
F/N/A Cuzcatlan Beverages, Inc.,  
Registrant

In the matter of  
Trademark Registration No. 2,375,219  
For the mark: CUZCATLAN COLA  
CHAMPAGNE and Design  
International Class 32

Trademark Registration No. 2,396,051  
For the mark: CUZCATLAN and Design  
International Class 32

Trademark Registration No. 2,423,027  
For the mark: CUZCATLAN and Design  
International Class 32

Trademark Registration No. 2,433,109  
For the mark: CUZCATLAN ROJITA and  
Design  
International Class 32

Trademark Registration No. 2,463,527  
For the mark: CUZCATLAN COLA  
CHAMPAGNE and Design  
International Class 32

Cancellation No.: 92,043,017

REGISTRANT'S MOTION TO DISMISS  
PETITIONERS' CONSOLIDATED  
PETITION FOR CANCELLATION

CBI.0101

REGISTRANT'S MOTION TO DISMISS PETITIONERS'  
CONSOLIDATED PETITION FOR CANCELLATION

Pursuant to Trademark Rule 2.132, Respondent moves the Board to dismiss this proceeding with prejudice for failure to prosecute. Trademark Rule 2.132(a) provides that if a

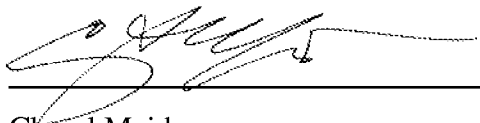
plaintiff's testimony period has expired and the plaintiff has not taken any testimony or offered any other evidence, the defendant may file a motion for dismissal on the ground that the plaintiff has failed to prosecute.

The Petitioners' Testimony Period expired on December 23, 2004. Petitioners did not take any testimony or offer any other evidence during Petitioners' Testimony Period. Petitioners have no good and sufficient cause as to why judgment should not be entered against them. It is the plaintiff's burden to timely seek an extension of time of its testimony period. *Hewlett – Packard Co. v. Olympus Corp.*, 931 F2d 1551, 18USPQ2d 1710 (Fed. Cir. 1991).

This motion is timely as it is being filed by Registrant during the thirty-day period following the close of Petitioners' Testimony Period and prior to the opening of Registrant's scheduled Testimony Period.

Thus we respectfully request that the Board enter judgment against the Petitioners' and dismiss this cancellation proceeding with prejudice.

Respectfully submitted,



Cheryl Meide  
Attorney for Registrant  
Florida Bar No. 0064173

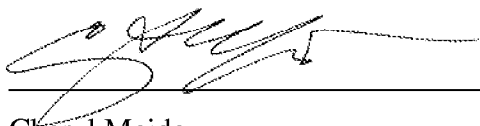
December 28, 2004

Date

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing Registrant's Motion to Dismiss Petitioners' Consolidated Petition for Cancellation was deposited with the United States Postal Service as First Class Mail, postage prepaid, in an envelope addressed to Robert M. Schwartz, Esquire, Ruden, McClosky, Smith, Schuster & Russell, P.A., 200 E. Broward Blvd., Fort Lauderdale, FL 33301 on the date set forth below.



Cheryl Meide  
Attorney for Registrant  
Florida Bar No. 0064173

December 28, 2004

Date

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